

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

DEANTHONY KIRK,)	
)	
Plaintiff,)	
)	
v.)	2:21-cv-556
)	
LISA V. CAULFIELD, ELLIOTT C.)	Chief Judge Mark R. Hornak
HOWSIE, THE PUBLIC DEFENDER'S)	Magistrate Judge Lisa Pupo Lenihan
OFFICE, RICH FITZGERALD, and THE)	
ALLEGHENY COUNTY, et al.,)	
)	
Defendants.)	

MEMORANDUM ORDER

This civil action was commenced on April 27, 2021, when Plaintiff Deanthony Kirk filed his Complaint with no attached Motion for Leave to Proceed in Forma Pauperis or filing fee. ECF No. 1. The Court entered an Order closing the case with instructions to submit a motion to proceed in forma pauperis. ECF No. 2. On May 25, 2021, Plaintiff filed a Motion for Leave to Proceed in Forma Pauperis. ECF No. 4. Plaintiff's motion was granted on June 9, 2021. ECF No. 7. The Complaint was docketed by the Clerk of Court that same day. ECF No. 8. The case was referred to United States Magistrate Judge Lisa Pupo Lenihan for pretrial proceedings in accordance with the Magistrate Judges Act, 28 U.S.C. §636(b)(1), and Local Rules of Court 72.C and 72.D.

The Magistrate Judge's Report and Recommendation (ECF No. 50), filed on May 17, 2022, recommended that the Motion to Dismiss (ECF No. 26) filed by Defendants Lisa V. Caulfield, Rich Fitzgerald, the Allegheny County, the Public Defender's Office, and Elliott C. Howsie be granted.

The parties were informed that in accordance with the Magistrate Judges Act, 28 U.S.C. § 636(b)(1)(B) and (C), and Rule 72.D.2 of the Local Rules of Court, that they had fourteen (14) days to file any objections, and that unregistered ECF users were given an additional three (3) days

pursuant to Federal Rule of Civil Procedure 6(d). Objections for registered users were due by May 31, 2022. Objections for unregistered ECF Users were due by June 3, 2022. ECF No. 50. The Plaintiff has twice sought extensions of time to the period for the filing of Objections, and the Court has granted such relief on each occasion. (ECF Nos. 51, 52, 53, 55). Objections were to be filed not later than July 30, 2022. No Objections were filed by that date.

Thereafter, after a thorough and careful review of the pleadings, documents in the case and of the Report and Recommendation, and the Court concluded that the Report and Recommendation was correct in its recommended disposition of this action, and on August 2, 2022, entered an Order, ECF No. 57, adopting the Report and Recommendation as the Opinion of the Court, and granting the then-pending Motion to Dismiss, ECF No. 26. That Order was mailed to Mr. Kirk that same date. ECF No. 58.

On August 16, 2022, the Court received a document from Mr. Kirk that was labeled as being Objections to the Report and Recommendation, ECF No. 59. The Court then entered an Order that such papers would be treated by the Court as either a Motion for Reconsideration of the Court's Order at ECF No. 57 or as Objections to the Report and Recommendation. After seeking and receiving an extension of time to do so, the Defendants filed a Response to the papers at ECF No. 59. Mr. Kirk then submitted a Supplement, ECF No. 64. The Court reopened the case on the Court's docket, ECF No. 65, and on January 13, 2023, directed that the Defendants file a response to the Supplement at ECF No. 64, and that no further filings by any party would be permitted without leave of Court. ECF No. 66. The Defendants filed an authorized and timely Response to the Supplement as directed by the Court. ECF No. 68. These matters are now fully briefed and ripe for disposition.

First, to the extent the filings of the Plaintiff arriving after this Court entered its Order adopting the Report and Recommendation are treated as being a Motion for Reconsideration, such

Motion is denied. The record does not reveal that there have been intervening changes in controlling law, or the presentation of evidence that was unavailable at the time of the Court's Order, nor does the Court conclude that the Court's Order was manifestly unjust.

The Plaintiff's Objections arrived well after the deadline set for their filing. However, the papers themselves are dated one (1) day before the filing deadline. In such circumstances, the Court will consider such Objections on the merits as though filed in a timely manner. Based on this Court's *de novo* review of all of the papers of record, including those filed after this Court's prior Order adopting the Report and Recommendation and all papers relative to the Motion to Dismiss and the Report and Recommendation and any Objections to them, the Court concludes that the Report and Recommendation is correct, that the Motion to Dismiss should be granted, the Objections of the Plaintiff be overruled, and this action be dismissed.

Therefore, the following Order is entered:

AND NOW, this 2nd day of March 2023,

IT IS HEREBY ORDERED that the Motion to Dismiss (ECF No. 26) filed by Defendants Lisa V. Caulfield, Rich Fitzgerald, The Allegheny County, the Public Defender's Office, and Elliott C. Howsie is **GRANTED**, and this action is **DISMISSED**.

IT IS FURTHER ORDERED that the Report and Recommendation (ECF No. 50) of Magistrate Judge Lenihan dated May 17, 2022, is adopted as the Opinion of the Court.

The Clerk of Court is directed to mark this case **CLOSED**.

s/ Mark R. Hornak
Mark R. Hornak
Chief United States District Judge

Dated: March 2, 2023

cc: Deanthony Kirk
KG1155
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(By U.S. Mail)